

Message Text

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EUR/WE - MR. VINE

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FM SECSTATE WASHDC

TO AMEMBASSY PARIS IMMEDIATE

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E.O11652: N/A

TAGS: CPRS, PFOR, FR

SUBJECT: EXTRADITION - HOLDER/KERKOW

REF: PARIS 7588

1. AT THIS POINT, BEST STRATEGY FOR OBTAINING EXTRADITION OF FUGITIVES IN THIS CASE MAY BE TO FIND MEANS OF PRE-SENTING ADDITIONAL ARGUMENT TO THE COURT ON THE QUESTION OF WHAT CONSTITUTES A POLITICAL OFFENSE FOR PURPOSES OF THE BILATERAL EXTRADITION TREATY. WE HAVE ADDITIONAL AFFIDAVITS THAT COULD BE SUBMITTED ON THE FACTS BUT ARE DOUBTFUL WHETHER THESE SUBMISSIONS WOULD JUSTIFY SPECIAL EFFORT BY GOF TO HAVE COURT HOLD ANOTHER HEARING OR HOLD OPEN THE RECORD FOR FURTHER SUBMISSIONS. ON THE OTHER HAND, WE BELIEVE LEGAL ARGUMENTS ARE VERY STRONG THAT PROTEST OF VIETNAM WAR, TO THE EXTENT THAT CAN BE IMPLIED FROM HALF-HEARTED EFFORT TO DIRECT FLIGHT TO HANOI, DOES NOT CONVERT A SERIOUS CRIMINAL ACT INTO A POLITICAL OFFENSE. THEREFORE, CRITICAL QUESTIONS ARE WHETHER MEANS CAN BE FOUND TO BRING LEGAL ARGUMENTATION BEFORE THE COURT AND WHETHER

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WE CAN OBTAIN GOF SUPPORT OR AT LEAST NEUTRALITY AS TO OUR

INTERPRETATION OF THE TREATY. WE ARE EXTREMELY CONCERNED AT SUGGESTION REFTEL THAT IMPORTANT FRENCH OFFICIALSMAY BELIEVE THAT HIJACKING MAY CONSTITUTE A POLITICAL CRIME

PRIMA FACIE. THE HAGUE CONVENTION AND ALL OF ITS ANTECEDENTS STAND FOR THE OPPOSITE PROPOSITION.

2. REQUEST YOU ASCERTAIN FROM APPROPRIATE GOF OFFICIALS WHO IN FRENCH SYSTEM IS RESPONSIBLE FOR ADVISING THE COURT OF FRANCE'S TREATY OBLIGATIONS IN CONNECTION WITH THIS CASE AND HOW U.S. MAY BRING ITS VIEWS OF THE LAW BEFORE THE COURT. YOU MAY INDICATE THAT IN U.S. VIEW GOF IS RESPONSIBLE FOR ASSISTING U.S. IN PRESENTATION OF THE CASE, WHICH INCLUDES AIRING WITH US ANY LEGAL PROBLEMS AS WELL AS DEFICIENCIES IN DOCUMENTATION; IN OUR VIEW, ON THE FACTS DEVELOPED SO FAR FRANCE HAS A TREATY OBLIGATION TO EXTRADITE FUGITIVES. WHILE IT IS TRUE THAT UNDER TREATY ULTIMATE DETERMINATION OF THE POLITICAL CHARACTER OF THE OFFENSE IS FOR THE REQUESTED STATE, THERE MUST BE A RATIONAL LEGAL BASIS FOR THE CONCLUSION CONSISTENT WITH INTERNATIONAL EXTRADITION PRACTICE. (THE FACT THAT A CASE MIGHT CREATE A POLITICAL PROBLEM FOR A REQUESTED GOVERNMENT DOES NOT CONVERT A CRIMINAL OFFENSE INTO A POLITICAL OFFENSE.) IN THIS CASE THERE IS NO EVIDENCE OF ANY CONNECTION BETWEEN THE HIJACKING AND A REVOLT OR COMPARABLE POLITICAL ACTION AGAINST THE GOVERNMENT OF THE UNITED STATES NOR IS THERE ANY EVIDENCE THAT THE AIRCRAFT WAS DIVERTED TO FACILITATE FUGITIVES ESCAPE FROM "POLITICAL PERSECUTION." THUS, THERE IS NO EVIDENCE GIVING RISE TO ANY COLORABLE CLAIM THAT THE OFFENSE IS "POLITICAL" IN ANY LEGAL SENSE. THE ONLY CRIME FOR WHICH FUGITIVES ARE SOUGHT AND FOR WHICH THEY WOULD BE PROSECUTED IF RETURNED IS THE COMMON CRIME OF AIRCRAFT HIJACKING. THERE IS NO POLITICAL OVERTONE TO REQUEST FOR EXTRADITION AND NO POLITICAL ISSUE THAT WOULD ARISE ON TRIAL IN THE U.S. THE U.S. COURT WILL DECIDE THE CASE EXCLUSIVELY ON THE MATERIAL FACTS AND LAW CONNECTED WITH THE HIJACKING. IN PRESENTING LEGAL ARGUMENTS YOU MAY DRAW ON PRIOR TELS. WE CAN, AND WOULD BE PLEASED TO, SUPPLY A WRITTEN MEMORANDUM FOR SUBMISSION TO THE COURT LIMITED OFFICIAL USE

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IN THIS CASE. DEPUTY LEGAL ADVISER FELDMAN WILL BE IN PARIS FOR AN OECD MEETING AT THE END OF THE WEEK AND COULD MEET WITH EMBASSY AND OR GOF OFFICIALS ON SATURDAY IF THAT WOULD BE USEFUL. KISSINGER

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